

No. 94/87-6Lab./2598.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the Management of (i) Secretary, Haryana State Electricity Board, Chandigarh and (ii) Chief Engineer, Thermal Plant, Faridabad.

BEFORE SHRI S.B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference Nos. 36/1985, 37/1985,

38/1985 and 39/1985

between

SARVSHRI JAWALA PARSHAD, MUNISH LAL, MANBAR SINGH AND MAHESH KAUSHIK, S/O SHRI H.S. KAUSHIK, HOUSE NO. 499, SECTOR-16, FARIDABAD AND THE MANAGEMENT OF SECRETARY, HARYANA STATE ELECTRICITY BOARD, CHANDIGARH AND (2) CHIEF ENGINEER, THERMAL PLANT, FARIDABAD

Present :

Shri H.S. Kaushik for the workmen.

Shri Partap Singh Manchu for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Sarvshri Jawala Parshad, Manbar Singh, Munish Lal and Mahesh Kaushik and the Management of Secretary, Haryana State Electricity Board, Chandigarh and (2) Chief Engineer, Thermal Plant, Faridabad to this Tribunal for adjudication : -

Whether Sarvshri Jawala Parshad, Munish Lal, Manbar Singh and Mahesh Kaushik are entitled to be promoted and confirmed as Boiler Operator ? If so, with what details ?

2. Four separate references were made by the Government and all the references were consolidated as these involved determination of similar question of facts and law. All the aforesaid four references are being disposed of by this award.

3. The petitioners, Employees of Haryana State Electricity Board, Faridabad are posted in Thermal Plant at Faridabad. Their grievance is that persons who were less qualified and junior to them have been promoted as Assistant Boiler Operators Boiler Operators by ignoring their claims.

4. The petitioners alleged that they entered in services of Thermal Plant, Haryana State Electricity Board, Faridabad as Work-charged T-Mate Fitter. They were promoted to the post of Boiler Attendants on 22nd May, 1980. Later on their services were terminated illegally on 29th May, 1980. They raised industrial disputes which were adjudicated by the Labour Court in their favour. The Labour Court, Faridabad set aside the order of termination of their services and reinstated them with full back wages. The Management of Thermal Plant has implemented the award. Their grievance is that Inder Singh and Narendra Paul who were junior to them were promoted by ignoring their claims. Inder Singh was working as Fitter in the grade of Rs. 400 in lower scale than scale of Boiler attendant. He was promoted as Assistant Boiler Operator in the grade of Rs. 525 on 22nd August, 1980 and then again promoted as Boiler Operator in the grade of Rs. 600. Likewise Narendra Paul who was Telephonist in the grade of Rs. 400 was promoted as Assistant Boiler Operator on 22nd August, 1980 and Boiler Operator on 3rd March, 1981, during probationary period by flouting the Board's circular and policies.

5. They also alleged that Virender Thakur, Jai Pal Singh, Ajay Kumar, Om Parkash, Dev Dutt, Jai Pal Rao, Bir Singh and Rajender Singh are work-charged employees. They were junior to them and working on lower grade when the petitioners were appointed as Boiler Attendant on 22nd May, 1980. These persons were promoted during the period when they were fighting their case in the Labour Court. Virender Singh, Jai Paul Singh and Ajay Kumar have been promoted as Boiler Operator in the scale of Rs. 600 where as remaining aforesaid persons have been promoted as Assistant Boiler Operator in the scale of Rs. 525 by ignoring their claim. Their plea is that seniority of work-charged persons is different than the seniority of regular employees and that the work-charged persons cannot be promoted unless they are first absorbed against regular posts. They further alleged that the promotion of aforesaid persons is violative of rules, circular and orders of the Board issued from time to time and prayed that they be also promoted with retrospective effect i.e. the date on which persons junior to them were promoted.

6. The case is contested by the respondent. It is pleaded that there are two categories of workmen in Haryana State Electricity Board viz. regular and work-charged employees. Their seniority is different. The work-charged staff is considered for absorption/appointment against regular sanctioned posts as and when these are sanctioned by the competent authority. It is specifically pleaded that the promotion to the post of Assistant Boiler Operator/Boiler Operator is done only on the basis of passing first class Boiler competency certificate. They took the plea that the petitioners were not qualified at the time when the promotions were made inasmuch as they obtained first class Boiler competency certificate later on. They also pleaded that the petitioners could not compare themselves with case of Sarvshri Jai Paul Singh, Virender Thakur, Dev Dutt, Om Parkash, Ajay Kumar, Jai Pal and Bir Singh who were working on work-charge posts even these persons obtained first class boiler competency certificate much earlier than the date the petitioners being acquired these qualifications. In nut-shell it was pleaded that the petitioners were not senior to the persons referred above and the promotion of the petitioners would be made against available vacant posts subject to their annual confidential reports being good.

7. The preliminary objection was also taken that this Tribunal has no jurisdiction to decide the present matter and that the claim is premature and is also bad on account of delay and laches.

8. The petitioners filed replications wherein they reiterated their stand and pleaded that essential qualifications for Boiler Attendant and Assistant Operator is Matric with I.T.I. Diploma and not the First class boiler competency certificate.

9. On the pleadings of the parties, the following issues were settled by my predecessor:—

- (1) Whether the claimants are entitled to be regularised as Boiler Attendants on the basis of seniority and are entitled be posted as Boiler Operators as alleged ? OPW
- (2) Whether no cause of action has accrued to the petitioners ? OPM
- (3) Whether Industrial Tribunal has no jurisdiction to decide these disputes as pleaded ? OPM
- (4) Whether the claims of the petitioners are premature ? OPM
- (5) Whether the claims of the petitioners are bad on account of delay etc. as pleaded ? OPM

10. I have heard Shri N.S. Kaushik Authorised Representative for the workmen and Shri Partap Singh Menchu, Legal Assistant on behalf of the respondent and perused the record. My findings on the aforesaid issues are as under :—

Issue No. 1

11. The first question to be determined in these cases in whether the passing of First class Boiler competency certificate is one of the essential qualification for promotion to the post of Assistant Boiler Operator/Boiler Operator. It will be relevant to refer the provisions in the Indian Boilers Act, 1923 and Haryana Boiler Operators Engineers Rules, 1971 framed in exercise of the powers conferred by section 29 of the Indian Boiler Act, 1923. Section 6 (e) of Indian Boilers Act, 1923 reads as under :—

“Save as otherwise expressly provided in this Act, no owner of a Boiler shall use the Boiler or permit it to be used—

(a)	XXX	XXX	XXX
(b)	XXX	XXX	XXX
(c)	XXX	XXX	XXX
(d)	XXX	XXX	XXX

(e) Where the State Government has made rules requiring that boilers shall be in charge of persons holding certificates of proficiency or competency unless the boiler is in charge of a person holding the certificate required by such rules”.

9. Rules 3 and 4 of Haryana Boiler Operation Engineering Rules, 1971 stipulate as under :—

“Rule-3. -The owner of a single or two or more boilers connected in a battery or of so many separate individual boilers situated within radius of 23 metres (75 feet) having a total heating surface exceeding 700 square metres (7500 square feet) in any of the cases shall not use the same or permit the same to be used unless the boiler or boilers are placed in direct charge of a competent person as defined in rule 4 in addition to such number of boiler attendants as may be prescribed by the Chief Inspector of Boilers.

Provided that the Chief Inspector XX XX XX XXX XXX XXX XXX

Provided further that nothing in XX XXX XXXX XXXX XXXX XXXX XXXX

Rule-4.—No person who does not possess a certificate of proficiency as a Boiler Operation Engineer under these rules shall be deemed a fit and proper person to hold charge of a boiler or boilers exceeding the limits laid down in rule 3.”.

10. Thus it would be seen that only qualified persons are being deemed fit and proper person to hold the charge of boiler even boiler attendants must be qualified persons. To use the boiler without boiler operation engineer is illegal under section 6(e) of the Indian Boiler Act, 1923 and Haryana Boilers Operation Rules 1971. Even in the policies circular Ex. W-2, office order No. 639, dated 23rd October, 1980 which contained criteria for recruitment and promotion at the relevant time stipulated in rule 4 therein the preference may be given to the persons possessing first class Boiler competency certificate for their promotion to the post of Operator.

11. In view of the aforesaid statutory provisions and circular letter of the Board, it is amply clear that the persons possessing First Class Boiler Competency Certificate were only eligible for promotion as Assistant Boiler Operator/Boiler Operator. In other words the possessing of First Class Boiler Competency Certificate was one of the essential qualification for promotion to the post of Boiler Operator.

12. The next question is to be seen as to whether the petitioners possessed the requisite qualifications at the time when Shri Inder Singh and Narinder Paul were promoted as Boiler Operator on 3rd March, 1981 or on the dates when work-charged persons namely Ajay Kumar, Jai Paul Singh, Virender Thakur were promoted on 27th October, 1979, 3rd March, 1981 and 4th March, 1981 respectively or the other work charged persons namely Dev Dutt and Om Parkash, Narinder and Jai Paul were promoted in March, 1981 as Assistant Boiler Operator. It will be seen that the petitioners were not qualified and did not possess First Class Boiler Competency Certificate in March, 1981. It is important to note that the petitioners admittedly got First Class Boiler Competency Certificate on the dates as detailed below :-

(1) Jawala Parshad	.. 3rd September, 1983
(2) Munish Lal	.. May, 1984
(3) Manbar Singh	.. 24th March, 1983
(4) Mahesh Kaushik	.. 19th August, 1982

13. Jawala Parshad WW-1 one of the petitioners is positive in his statement that Inder Singh, Narinder Paul Singh, Ajay Kumar, Jai Paul Singh etc. were promoted only when they passed First Class Boiler Competency Certificate. He admitted that no person has been promoted as Assistant Boiler Operator or Boiler Operator since September, 1983. He acquired First Class Competency Boiler Certificate on 3rd September, 1983. He admitted in cross examination that no person junior to him and has not passed the First Class Boiler Competency Certificate has been promoted as Assistant Boiler Operator or Boiler Operator. Jawala Parshad thus cannot have any legitimate grievance. He did not possess requisite qualification when he was ignored for promotion.

14. Hence the wisdom of competent authority in promoting First Class Boiler Competency holders and no other persons with lower qualification cannot be questioned. As such the issue is answered against the workman.

Issue No. 2, 3, 4 and 5 :

15. These issues are not pressed by the respondent Management. Hence these are answered against the respondent Management.

16. Hence the petitioners can not claim promotion to the post of Boiler Operator from retrospective effect. However the Board should consider their claim for promotion as and when the vacancies fall as the petitioners now possess requisite qualifications viz. passing of First Class Boiler Competency Certificate. The award is passed accordingly.

S. B. AHUJA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 27th February, 1987.

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Endorsement No. 278, dated 27th February, 1987.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the I.D. Act, 1947.

S. B. AHUJA,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 9/4/87-6 Lab./2609.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workmen and the management of M/s. (i) Secretary Haryana State Electricity Board, Chandigarh, (ii) Chief Engineer, Thermal Power Plant, H.S.E.B., Faridabad :—

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 18/1985, 19/1985 and 20/1985

Between

SARVSHRI BRIJ MOHAN, MANOHAR LAL AND OM PARKASH WORKMEN C/O SHRI H.S. KAUSHIK, HOUSE NO. 499, SECTOR-16, FARIDABAD AND THE MANAGEMENT OF SECRETARY, HARYANA STATE ELECTRICITY BOARD, CHANDIGARH AND THE MANAGEMENT OF CHIEF ENGINEER, THERMAL POWER PLANT, H.S.E.B., FARIDABAD.

Present—

Shri H.S. Kaushik, A.R. for the workmen.
Shri Partap Singh Manchu, for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Sarvshri Brij Mohan, Manohar Lal and Om Parkash Workmen and the Management of Secretary, Haryana State Electricity Board, Chandigarh (2) Chief Engineer, Thermal Power Plant, Haryana State Electricity Board, Faridabad to this Tribunal for adjudication :—

Whether the workmen namely Sarvshri Brij Mohan, Manohar Lal and Om Parkash Loco Shunter Drivers are entitled to be regularised on their posts and whether they are entitled to claim pay scale of Rs. 700—1250; If so, with what details?

2. All the three references involved determination of similar question of fact and law and were consolidated by my predecessor and further proceedings were taken in case No. 18/1985. As such all these references are being disposed of by this award.

3. The petitioners are the employees of Haryana State Electricity Board. They are working in Thermal Plant Faridabad as Loco Shunter Drivers now designated as Thermal Supervisors grade-II (Loco). They joined service as workcharged employees in the year 1974 and 1975 and were placed in the grade of Rs 200—450. They possessed requisite qualifications for the job i.e. Matric with diploma I.T.I. Their grievance is that they had not been regularised on the posts though they fulfil requisite criteria laid down by the Haryana State Electricity Board (hereinafter referred to as the Board). They have prayed that they be regularised against the posts on which they are working. Their other demand is that they should be placed in the scale of Rs. 700—1,250 as is being allowed to junior Engineer, Thermal Plant H.S.E.B. and on their second demand, the claimants alleged that they were getting pay scale of Rs. 200—450 likewise of their 20 categories shown in annexure Ex. W-1. The Board revised the pay scale of different categories of employees w.e.f. 1st April, 1979 and the petitioners were placed in the pay scale of Rs. 600—1,100 by office order No. 230, dated 25th February, 1981. Later on the Board discriminated against them in as much as it allowed pay scale of Rs. 700—1,250 to the junior engineers but ignored their claim for similar treatment. This revision was effected,—vide office order No. 303, dated 22nd April, 1982. They thus prayed that they be given parity in pay scale with junior engineers and placed in the pay scale of Rs. 700—1250.

4. The claim of the petitioner was controverted in the written statement filed by the respondent. Preliminary objection was taken that this Tribunal has no jurisdiction to adjudicate and decide the matter and that the claim of the petitioners is bad on account of laches and delay. On merits, it was pleaded that the

workcharge staff is considered for absorption and appointment for regular sanctioned posts as and when these are sanctioned by the Board provided they possessed the basic qualification and experience for the post. It was pleaded that pay scale of Rs. 700—1,250 has been primarily allowed to the junior engineers who possessed qualification of 3-4 years diploma in Electrical/Mechanical Engineering and that the nature and responsibility of work was quite different from that of Loco Shunter Drivers. It was pleaded that there was no discrimination and the petitioners are not entitled to claim parity in pay scale with junior engineers.

5. On the pleading of the parties the following issues were framed by my predecessor :—

- (1) Whether Shri Brij Mohan, Manohar Lal and Om Parkash Loco Shunter Drivers should be regularised and be placed in the scale of Rs. 700—1,250 ? If so, with what details ? OPW
- (2) Whether the Industrial Tribunal has no jurisdiction to decide the reference ? CJM
- (3) Whether the claim petition is bad on account of achos and delay ? OPM

6. I have heard Shri H.S. Kaushik, learned authorised representative for the workman and Parup Singh Manchu Legal Assistant H.S.E.B. for the Management and perused the material on record. My findings on the aforesaid issues are as under :—

7. At the outset it may be pointed out that Brij Mohan, Manohar Lal and Om Parkash workmen have since been regularised on the post of Thermal Supervisors grade II (Loco) previously known as Loco Shunter Drivers with effect from 15th January, 1986 during the pendency of reference in the existing scale of Rs. 600—1,100 which pay scale the petitioners were already drawing. Thus the first demand for their regularisation/absorption for regular posts has been met by the Board and this aspect does not survive for adjudication.

8. Shri H.S. Kaushik learned Authorised Representative for the workmen argued that the petitioners alongwith Junior Engineers were previously in the pay scale of Rs. 200—450 which was later on revised to Rs. 600—1,100. He submitted that the petitioners always enjoyed similar treatment in the matter of pay scale alongwith Junior Engineers but later on the Board gave step monthly treatment to the petitioners when it allowed high pay scale of Rs. 700—1,250 to Junior Engineers and ignored the petitioners for similar treatment. He submitted that the action of the Board is discriminatory as the principle of 'equal pay for equal work' has not been borne in mind by the Board. His submission was that responsibilities and nature of duties of the petitioners and Junior Engineers are almost same. In support of his contention, he cited the case between **D. Rajagopalan and The Union of India** through the Salt Commissioner Rajasthan, 3. The Deputy Salt Commissioner, Madras, 1985-II-LLJ-page 459 S.C.

9. On the other hand, Shri Parup Singh Manchu, learned Authorised Representative for the respondent contended that all Loco Shunter Drivers in H.S.E.B. are drawing pay scale of Rs. 600—1,100 and there is no question of discrimination qua the petitioners. His submission was that the petitioners claim for higher scale with Junior Engineers is not justifiable because the petitioners have no equality or similarity with Junior Engineers in any sphere of duty. He canvassed that nature of duties and responsibilities of the Junior Engineers are different and higher in comparison to the petitioners. He also pointed out that the promotion avenue of Junior Engineers is different in comparison to the petitioners and seniority of Junior Engineers is also different in comparison to the petitioners. In nut shell, his submission was that act of the Board in allowing scale of Rs. 700—1250 to Junior Engineers is not discrimination and does not violate the article of 14 and 16 of the Constitution of India. He placed reliance on the ruling reported as **Air India and Nargesh Meerza and others** 1981-II-LLJ page 314 and **Aziz Ahmad and others vs. Govt. of U.P.**, 1986-II-S.L.R. page 241.

10. I have given care full consideration to rival contentions advanced by both the sides. No material data has been placed before this Tribunal by the petitioners to enable this Tribunal to make comparative study of duties and responsibilities of junior engineers with petitioners. It is admitted by Brij Mohan WW-1 that duties of Junior Engineers and persons mentioned in other categories No. 2 to 8 in Ex. W-1 are different. It is not disputed by him that the categories of Junior Engineers, Foreman, and Loco Shunter Drivers are distinct and different categories. Hence only inference that can be drawn is that the nature of job done by the Loco-Shunter Drivers is different than the job assigned to the Junior Engineers. Even educational qualifications of these categories are not identical. In such circumstances, I hold that there is difference of functions, duties, responsibilities of petitioners in comparison to Junior Engineers. If different grades are created on account of higher responsibilities or on account of nature of work being different, it is not possible to accept the complaint of dissimilar pay. In **Randhir's case Vs. Union of India**, A.I.R. 1982 Supreme Court page, 879, the Supreme Court has held that differential treatment in appropriate cases can be justified, when there are two grades based on reasonable grounds. The petitioners thus cannot claim parity in pay scale with Junior Engineers.

11. It was vehemently argued by Shri H.S. Kaushik learned Authorised Representative for the workman that in the past, the petitioners has always been treated similarly in the matter of pay scale with Junior Engineers and now the petitioner cannot be placed disadvantage position in comparison with Junior Engineers. His submission was that principle of "equal pay for equal work" has not been borne in mind while rejecting the

claim of the petitioners by the Board. His argument is devoid of merit. In case of **Union of India Others Vs. E.S. Soundara Rajan and others** 1980-S.C.C. (L & S) 300 their Lordships of Supreme Court observed as under :—

“Equality postulates identity of the class and once that is absent, discrimination cannot arise. There cannot be any discrimination when distinct categories in Government service have different treatment in regard to their salary scales or other conditions of service. Merely because fortuitous circumstances arising out of some peculiar developments or situations create advantages or disadvantages for one group or the other although in the earlier stages were more or less, alike there cannot be a case of discrimination.

11. Hence the petitioners cannot set up grievance for equal treatment with junior Engineers. Accordingly it is held that they are not entitled to be placed in pay scale of Rs. 700—1250. The issue is answered accordingly.

12. *Issue No. 2.*—It was argued by the Authorised Representative of the respondent that claim of higher scale/revision of scale is bad in law and the Industrial Tribunal has no jurisdiction to adjudicate the same because the said matter is not covered under IIIrd Schedule of the Industrial Disputes Act, 1947. This argument has got no merit. Under Section 7-A of the Industrial Disputes Act, the Industrial Tribunal can adjudicate the dispute relating to any matter whether specified in the Second Schedule or the Third Schedule. The question of wages and revision of grades is the matter which falls within Third Schedule. Hence this Tribunal has jurisdiction to adjudicate this dispute and the issue is answered against the respondent.

13. *Issue No. 3.*—This issue was not pressed by the Authorised representative of the Management. Hence it is answered against the respondent.

14. In the final analysis, it is held that the petitioners have since been regularised in the scale of Rs. 600—1100 on the post of Loco Shunter Drivers [now designated as Thermal Supervisors (Loco)]. There is no justification to allow them pay scale of Rs. 700—1250 which is being allowed to the Junior Engineers. The award is passed accordingly.

S. B. AHUJA.

Dated 26th February, 1987.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 277, dated 27th February, 1987.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/3/87-6 Lab./2612.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of State Transport Controller, Haryana, Chandigarh (ii) Haryana Roadways, Faridabad.

IN THE COURT OF SHRI A.S. CHALIA, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD
Reference No. 373 of 1985

Between

SHRI KHEM CHAND, WORKMAN AND THE RESPONDENT-MANAGEMENT OF STATE
TRANSPORT CONTROLLER, HARYANA, CHANDIGARH, (ii) HARYANA ROADWAYS,
FARIDABAD

Present.—

Shri Pardeep Sharma, for the workman.

Shri P.K. Sachdeva, for the respondent-management.

AWARD

This reference under section 10(1)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour),—*vide* its endorsement No. ID/FD/141-84/25638-47, dated 13th June, 1985, to adjudicate upon the dispute of service matter covered by Second Schedule under Section 7 of the said Act, arisen between Shri Khem Chand, workman and the respondent management of State Transport Controller, Haryana, Chandigarh (ii) Haryana Roadways, Faridabad. Accordingly it has been registered as reference No. 373 of 1985.

2. Khem Chand was a Conductor at Dushehra Ground Bus Stand, Faridabad and to his surprise he had received notice, dated 10th March, 1983 retiring him from service with effect from 17th June, 1983 on attaining the age of 55 years under rule 5.32 Punjab Civil Service Rules, Vol. II) and against the same he had filed an appeal but notwithstanding the same he was retired from service on 17th June, 1983. It has been claimed by him that he had been performing and discharging his duties diligently and maticulously and he had earning good reports. The allegations are that impugned order is absolutely illegal since he had unstained service record at his credit. Accordingly he has requested to reinstate him on his job with continuity of service and further with full back wages.

3. On notice, respondent has filed Written Statement and contested the reference. It is alleged that representation made by him was rejected and he was released on 31st July, 1983 on attaining the age of 55 years. It is claimed that impugned order, dated, 17th June, 1983 is perfectly valid and in accordance with service rules. By way of replication Khem Chand has reiterated his claim as well as allegations also.

4. On the pleadings of the parties, my learned predecessor had framed, the following material issue on 24th October, 1985 :

(i) As per reference ?

On behalf of respondent Nihal Singh, Clerk has been examined. On the other hand there is statement of Khem Chand. I have heard the parties as represented above. My findings has been as below.

5. Issue No. 1.—This Bus Conductor was surprised on receiving notice, dated 10th March, 1984 Ex. M-1 retiring him from service on attaining the age of 55 years as required under rule 5.32(c) Punjab C.S.R. Vol. II as applicable to the State of Haryana. In compliance of the same he was retired with effect from 31st July, 1983,—*vide* order, dated 17th June, 1983 Ex. M-2. About these two documents there is statement of Khem Chand, Clerk. Khem Chand has referred to his appeal Ex. W-1 addressed to State Transport Controller, Haryana, Chandigarh and rejection there of Ex. W-2. He has placed reliance on Ex. W-3 appreciation letter issued to him by the respondent Ex. W-4 is copy of order, dated 16th August, 1983 issued by the Haryana Government.

6. During the Course of arguments confidential file of this conductor has been produced and I have the occasion to go through the same. The said Reports starting from 1973-74 were taken into consideration while passing the impugned notice as well as order also. He had earned very good reports during two years and good reports for six years. It appears that his confidential reports were not filled in for 1981-82 and 1982-83 and in absence of the same no adverse inference could be drawn against him. In this manner his service record was good as well as very good during the period of 9 years. Appreciation letter Ex. W-3 of 1982-83 is an addition to his creditability. On the basis of this record there could hardly be any case to retire him at the age of 55 years and about it respondent has not been able to raise any finger.

7. However, it was, his bad luck that during 1973-74 Traffic Inspector had recorded a entry about his integrity as doubtful and further he was assessed as average also. The same was conveyed to him,—*vide* letter, dated 11th April, 1975 and it appears that against the same he did not file any representation. The respondent has taken into consideration this entry doubtful about integrity a serious one against him and simply on that ground had issued the impugned show cause notice and retirement order also. Reliance is being placed on order, dated 24th August, 1973 issued by the Haryana Government,—*vide* which confidential reports for the last 10 years are to be taken into consideration and in case 70 per cent thereof are good or above then concerned employee is to be retained into service beyond 55 years otherwise not. In my opinion this subsequent letter, dated 16th August, 1983 supports the case of Khem Chand. Reliance has also been placed on 1986-I-Service law Reporter page 486 Mohan Lal Kansal *versus* State of Punjab. This judgement is dated 16th January, 1986. In that case confidential reports for the last 8 years were good while the same for five years were having some adverse remarks. Shri Kansal was compulsorily retired on attaining the age of 55 years and that order was quashed by the Hon'ble High Court. The present case of this poor Conductor is rather on stronger side since he had earned appreciation letter as well as very good reports also the entry of integrity doubtful nature of 1972-73 appear to be of stray nature since it was incorporated by the Traffic Manager without elaborating the same. In my opinion a supervisory office is

duty bound to have some fear in his mind while spoiling the career of his subordinates. Any how he was a Adda Conductor only and there could be hardly any field for him to indulge any corruption. I am of the view that there is no risk if this stray entry is ignored since after that he had considerably improved as good as well as very good reports and appreciation letter also were earned. The impugned notice dated 10th March, 1984 and retirement order dated 17th June, 1983 are on the face of it void and against the principles of natural justice and as such the same are hereby quashed. In consequence thereof Khem Chand is entitled to have all the benefits arising due to his reinstatement. However he may not be in a position to regain his dignity since he has already attaining the age of 58 years and is to be deemed as having been retired from service. All the benefits accordingly be calculated and arrears be paid.

A.S. CHALIA,

Dated the 25th March, 1987.

Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 613, dated the 8th April, 1987

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under Section 15 of the Industrial Disputes Act.

A.S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

The 25th May, 1987

No. 9/1/87-6Lab./2892.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s XEN, S&T, Haryana State Electricity Board, Yamuna Nagar.

**IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA**

Ref. No. 334 of 1984

**SHRI NARESH KUMAR C/O PT. MADHU SUDAN SARAN COWSHISH, LATHMARAN STREET,
JAGADHRI AND THE MANAGEMENT OF THE XEN S & T, HARYANA STATE ELECTRICITY,
BOARD, YAMUNA NAGAR.**

Present:—

Pt. Madhu Sudan, for workman.

Shri S. Bindra, for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of its powers conferred,—*vide* clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Naresh Kumar and Messrs H.S.E.B. originally to Labour Court, Faridabad,. The terms of the reference are as under:—

“Whether termination of services of Shri Naresh Kumar is justified and correct, if not to what relief is he entitled?”

Labour Court at Ambala was created in April, 1984 so this reference was received by transfer.

Workman through his demand notice dated 19th September, 1983 alleged that he had been serving the respondent-management as a Cleaner of the Truck on permanent job. His services were terminated on 30th May, 1981 in a most arbitrary manner without holding any inquiry and without affording any opportunity of leading any defence evidence and opportunity of being heard was also denied to him. He prayed for his reinstatement with continuity of service and with full back wages.

Respondent-management contested the dispute and contended that H.S.E.B. is an body corporate but it has not been impleaded as a party to this reference. It was also contended that workman was employed as a work charged Cleaner,—*vide* appointment latter 6th October, 1981 he was never confirmed. Shri Naresh

Kumar was involved in a theft case on 30th April, 1983 and was caught red handed along with two other persons. Applicant confessed the theft and submitted confession statement in writing to the management. In view of the confession statement made by the applicant no domestic inquiry was required since the act of the applicant involved gross mis-conduct on his part. It was contended that the workman is not entitled to reinstatement with the relief of continuity in service and with full back wages.

Workman filed replication through which he controverted the contentions of the respondent-management alleging that the alleged confession statement relied upon by the management was not voluntary. But it was got by the respondent by way of harrassing the applicant and under duress, so it was prayed that this type of confession statement has got no sanctity in eyes of law.

On the pleadings of the parties the following issues were framed:—

Issues:

- (1) Whether termination order dated 30th April, 1983 is justified and correct, if not its effect?
- (2) Whether the reference is bad for non-joinder of necessary parties?
- (3) Relief.

I have heard Shri Madhu Sudan Saran Cowshish, Authorised Representative of the workman and Shri S. Bindra for respondent management and have perused the oral and documentary evidence placed on the file. My issuewise findings are as under : -

Issue No. 1 :—

Onus of this issue was upon the management, so management to discharge the onus of this issue examined Shri S.S. Panwar, Assistant Xen and Shri Kadmi Singh Chauhan, Chief Security Officer both witnesses deposed that on 30th April, 1983 they were coming towards Luxmi Service Station and noticed that Vehicle No. 1141 HRX had been parked at Luxmi Station, Jagadhri. Shri Sahib Singh and Shri Jaswinder Singh were busy in draining out diesel of this vehicle into canes while Shri Naresh Kumar present workman was busy in taking care of the fact that whether any Officer/official of the department is coming or not. Since Shri Naresh Kumar did not know them, so he could not point out their arrival to Shri Sahib Singh and Shri Jaswinder Singh. Due to this fact all the three persons were caught red handed while draining out the diesel of the alleged vehicle. Shri Sahib Singh, Jaswinder Singh and Naresh Kumar all were brought in Kehra store office. They were questioned about this behaviour so all the three employees made confession statement that they had drained out the diesel and they made mercy appeal that they may be excused. On the basis of their confession statements which was submitted to the Xen, services of all the three workmen were terminated. Management tendered into evidence photostat copy of the confession statement which is Ex. M-1. It also tendered into evidence the photo stat copy of Log book Ex. MW-4/1 which reads that on 30th April, 1983 vehicles HRX No. 1141 was taken out by Shri Sahib Singh at 12.00 noon and this fact also supported by MW-3 Shri K.S. Chopra Junior Engineer. Shri Ram Kishan MW-4 Security guard also deposed that on 23rd April, 1983. Vehicles No. HRX 1141 was taken by Shri Sahib Singh from the store. In cross-examination he stated that the Log books and record of the security staff is maintained by Security Officer. He has further deposed that he did not know whether Shri Sahib Singh possess licence of driving or not.

To rebut the evidence of management Shri Naresh Kumar examined himself as W-1 and deposed that he was employed as an Truck Cleaner of 30th April, 1983. he was involved in a theft case of diesel and was removed from service without issuing any charge sheet. He never submitted any resignation. Respondent management obtained confession statement from him under coercion and duress. He stated that he never accompanied Shri Sahib Singh and Jaswinder Singh to Luxmi Petrol Pump, Jagadhri and he was involved wrongly in the case of theft. AW-2 Shri Hakim Singh deposed that he is an Crane Operator, he knows Shri Naresh Kumar. He was involved wrongly in a theft case of diesel by Shri Panwar and Mr. Chauhan at Kehra Store. Shri Panwar have personal enmity with Shri Naresh Kumar, Shri Kuldip Singh Chopra, J.E. and Panwar both called Shri Sahib Singh, Jaswinder Singh and Naresh Kumar gave threat to them and got recorded confession statement from them regarding theft of diesel from Truck HRX No. 1141.

In view of the above evidence the case of the parties is clear management's allegations are that Naresh Kumar was on guard while Shri Jaswinder Singh and Sahib Singh were busy in draining out the diesel from the truck and thus they were busy in stealing diesel from the truck of respondent-management. They stated categorically that all three person were caught red handed and later on all three made confession statements regarding mis-chief.

On the other hand the defence of Shri Naresh Kumar is that he was not present at the alleged spot nor Sahib Singh and Jaswinder Singh were caught stealing by way of draining out diesel from the truck. In fact they have been falsely involved and confession statement has got recorded from him under coercion and duress.

To see the legality of the action taken by the management I would like to discuss here that first of all except confession statement Ex-M-1 there is no independent evidence against Shri Naresh Kumar regarding being party to theft to diesel from truck No. HRX 1141. Statements of Shri S.S.Panwar and Shri Kadam Singh Chauhan cannot be believed because both of them are closely related to each other as per their our admission. They them self apprehended Shri Naresh Kumar and his two other associates brought them at Kehra store and got written confession statements from all the three persons. I do not here hesitate in remarking that both person acted in the capacity of an prosecutor and a judge also. They did not bother to get the confession statement recorded in the presence of any other independent and impartial person.

The management has failed to examine any person from the public who was present at that time at Luxmi Service Station Jagadhri where Naresh Kumar and his associates were busy in committing theft of diesel including owner and employees of the petrol pump, inspite of fact that public person, petrol pump owner and his employees were present, so this creates suspicion that the things were not as per the allegations of the management it may be in other way. More over the duty of the management was to have informed the police either from the petrol pump or from the Kehra Store to get a case registered against Naresh Kumar and his associates but it was not done. The management preferred to terminate services of the workmen.

No notice, no pay, in lieu of notice period and no retrenchment compensation was even paid to Shri Naresh Kumar before dispensing with his services. On the basis of his misconduct as mentioned in the termination letter Ex-A-1 statement of Shri Naresh Kumar copy of the same is Ex-M-1 is not admissible in view of section 24 Indian evidence Act, 1872 just like as statement before an Police Officer.

The Log Book and register of entrance and exist of vehicle maintained at Kehra store is kept in the custody of the Security Officer Shri Kadam Singh Chauhan posted as Security Officer, at the alleged and questioned time.

Shri Ram Kishan deposed that on 23rd April, 1983 Vehicle was not taken by Shri Sahib Singh while Ex-MW-4/1 reads that vehicle HRX No. 1141 was taken by Sahib Singh on 30th April, 1983 so there is a discrepancy in the statements of those witnesses and movement register and benefit of the same goes to the workman.

As per appointment letter of Shri Naresh Kumar dated 6th October, 1981, he joined service of respondent management on daily wages as a Cleaner on work charged basis and his services were dispensed with on 30th May, 1983.—*vide* order Ex-A-1. Thus Shri Naresh Kumar remained in service of respondent-management from 6th October, 1981 to 20th May, 1983, so he had completed his services more than 240 days. In these circumstances while dispensing with the services of Shri Naresh Kumar it was incumbent upon the management to have issued one month notice or should have paid one month pay, in lieu of, notice period and retrenchment compensation. So there is an utter violation of provisions of section 25 (F) of the Industrial Disputes Act, 1947 by the respondent management while terminating the services of the workman, so the termination order passed by the management is incorrect and unjustified, so this issue is decided, in favour of workman against the management.

Issue No. 2 :

The respondent management has taken a plea that H.S.E.B. is an juristic person. It has not been joined as a party to this dispute. No doubt H.S.E.B. being an juristic person should have been joined as an respondent but in the present case XEN, H.S.E.B. of Yamuna Nagar was the appointing authority of Shri Naresh Kumar and this fact is evident from the appointment letter dated 6th October, 1981 which was issued under the signatures of XEN/S&T H.S.E.B. Yamuna Nagar and due to that fact XEN alone was impleaded as a respondent so the reference is not at all bad for non-joinder of necessary and proper parties. So this issue is also decided, in favour of, workman against the management.

Issue No. 3 :

For the fore going reasons on the basis of my issue wise findings I order the reinstatement of Shri Naresh Kumar from the day of his termination from service without relief of back wages because Shri Naresh Kumar, in his statement before this court never stated that he is out of job since the day of termination of the services nor he stated even in a single word in support of the claim of back wages. Had Shri Naresh Kumar would have claimed back wages, the management might have rebutted to that fact either in cross-examination or while leading evidence in rebuttal, in these circumstances workman Naresh Kumar is not entitled to back wages. I pass award regarding the dispute between the parties accordingly.

The 5th March, 1987.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court Ambala.

Endst. No. 528, dated the 10th March, 1987.

Forwarded (Four Copies), to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/1/87-6Lab./2893.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the Management of M/s The Ambala Central Co-operative Bank Ltd., Ambala City.

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA

Ref. No. 193 of 1984.

SHRI MATU RAM S/O SHRI GOBIND RAM, V. & P.O. AMALI, TEH. NARAINGARH, DISTT.
AMBALA; AND THE MANAGEMENT OF THE MESSRS THE AMBALA CENTRAL
CO-OPERATIVE BANK LTD., AMBALA CITY

Present:—Shri J. R. Sharma, for workman.
Shri Gian Grewal, for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of its powers conferred—*vide* clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947 referred dispute between Shri Matu Ram and Messrs The Ambala Central Co-operative Bank Ltd., Ambala City originally to Labour Court, Faridabad. The terms of the reference are as under :

“Whether termination of services of Shri Matu Ram, workman is just and correct, if not to what relief is he entitled?”

On constitution of Labour Court at Ambala in April 1984, this reference was received by transfer.

Workman through his demand notice dated 10th November, 1983 alleged that he obtained training from Co-operative Training Institute, Rohtak Course and was appointed as a Mini Bank Manager in the Primary Co-operative Credit & Service Society by the respondent management,—*vide* its letter No. 14805/EA/7980. In month of October, 1979 his postings were made on different dates at different stations such as Sadakpur, Kurali, Naharpur, Rasulpur, Kherki, Manakpur, against vacant post. He deposited Rs. 2,000 as security as per condition in the appointment letter. His provident fund was also deducted from his wages from time to time. On 3rd October, 1983 his services were terminated without any reasons, so the termination order passed by the respondent management is illegal and *mala fide* because petitioner had completed service more than 240 days to his credit. So no compliance was made of the provisions of section 25 (F) of Industrial Disputes Act, 1947. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent appeared contested the dispute and contended that petitioner was appointed purely on temporary and adhoc basis for less than 90 days and thereafter; the period of contract of his service had not renewed from time to time. No provident fund was deducted from the wages of the petitioner. The vacant posts were filled up by way of making regular appointments and the services of petitioner were rightly dispensed with; in accordance with the terms of his appointment which were on adhoc basis and no compliance of provisions of section 25(F) of Industrial Disputes Act, 1947 was essential in the case of the petitioner.

Petitioner file replication through which he denied the contentions of the respondent and he re-asserted his claim made in the demand notice.

On the pleadings of the parties the following issues were framed:

Issues :

1. Whether termination order dated 3rd October, 1983 regarding services of workman Matu Ram as per reference is justified and correct, if not its effect? OP M

2. Whether this court has got no jurisdiction to try this dispute.
3. Relief.

I have heard Shri Janak Ram Sharma for workman and Shri Gian Grewal for respondent management and have perused the oral and documentary evidence placed on the file. My issue wise findings are as under:—

Issue No. 1

In support of this issue management examined Shri S.K. Jindal, Establishment Officer of Ambala Central Co-operative Bank Ltd., Ambala City who deposed that workman was joined in 1979 on *ad hoc* basis or 89 days,—*vide* Ex. M-1 and thus his services had been terminated,—*vide* separate notice and he was being re-employed time and again,—*vide* separate orders which are Ex M-2 to Ex. M-20. He denied the suggestion that appointment of petitioner was made only for 89 days, so that he could not complete service of 240 days. In cross-examination he admitted that last time when he was removed from service notice was issued but no retrenchment compensation was paid to him.

Workman in support of his case examined AW-1 Shri Tara Singh, Secretary, Co-operative Credit & Service Society, Kherki who deposed that he has brought the summoned record of the workman as per attendance register from 12th September, 1981 to 7th December, 1981 petitioner had been serving the respondent management continuously. The records of the society used to be maintained by the petitioner himself. The charge of the society of the cash also used to be kept and handled by the petitioner. In cross-examination he stated that he has been working in place of petitioner during the aforesaid period. Petitioner never handed over charge of the society to any other person.

AW-2 Shri Matu Ram supported his case by saying that he joined service of respondent management on 3rd November, 1979 and remained posted at different stations and different times. He further stated that he worked in the pay scale of 110--225 and in the revised pay scale also which was Rs. 480 onwards. His security was refunded in 1986 when the regular appointment was made. He submitted his application on the basis of advertisement but he was not selected. In cross-examination he admitted that he was served with notice for terminating his services but no retrenchment compensation was paid to him.

In view of the above pleadings and evidence of the parties the case of the respondent refuted that appointment of Shri Matu Ram was made for fixed period i.e. for 89 days and on expiry of this period his terms of services used to be extended for 89 days till his final termination. Shri Gian Grewal argued that in view of amendment under section 2(00) (bb) of Industrial Disputes Act, 1947. Services of workman came to an end automatically on the expiry of period of his service contract, so he urged that it is not a retrenchment in view of section 2(00).

But I think that this contention of the Ld. Authorised Representative of the respondent management is not tenable because the amendment under section 2(00) (bb) came in the year 1984 while the termination of workman pertains to 3rd October, 1983. Shri Gian Grewal failed to cite the applicability of the newly inserted amendment from retrospective effect, so his contention is futile and not tenable.

It is admitted fact between the parties that Shri Matu Ram had been working for the respondent management from 3rd November, 1979 up till 3rd October, 1983. AW-1 Shri Tara Singh employee of the respondent management deposed that workman Matu Ram had been working from 12th September, 1981 till 7th December, 1983 as per attendance register continuously in the employment of respondent management.

Even if the contention of the respondent management is to be admitted for the sake of arguments that after completion of every 89 days one day break was applied in the service of petitioner, in those circumstances also that break is meaning less and his service was more than 240 days. This view has been taken in cases of Santosh Gupta *versus* State Bank of Patiala 1980 C Vol-2 LLJ Supreme Court 72 and 1977 LAB-IC 687 and Surinder Kumar Verma etc. *versus* The Central Government Industrial Tribunal-cum-Labour Court, Delhi and others.

The Hon'ble Supreme Court in the case of State Bank of India *versus* Sundramani took a view that a workman employed only for nine days of a specific orders. Providing for automatic termination of services on the expiry of nine days constitute retrenchment within meaning of section 2(00) of the Industrial Disputes Act, 1947. Hon'ble Mr. Justice V.R. Krishan Iyer who delivered the judgement held that "a termination take place where a term expires either by the active step of the master or running out of stipulated period termination embraces not merely the act of termination by the employer but the fact of termination how so even produced". The conclusion of the apex court in this case therefore was even if the termination is not affected by the employer by the a specific order and it takes place by efflux of time, that would also be retrenchment within the meaning of section 2(00) of the Industrial Disputes Act, 1947.

In the case in hand workman had completed service more than 240 days while terminating his services a notice was issued to the workman but no retrenchment compensation was paid to him. Appropriate Government was not informed regarding his termination.

Respondent management by making advertisement invited applications from the candidates to fill up the vacant posts by way of making regular appointments. Applicant submitted his application. He was interviewed but he was not selected by the respondent management.

This non selection of the workman is illegal because it was laid down in 1980 56 FJR page 206 in case title Nawashahar Central Co-operative Bank Ltd. and Labour Court etc. Shri Matu Ram was appointed as a Clerk by the bank on *ad hoc* basis for three months. He was terminated some regular posts of clerks fell vacant in the bank which were advertised. Shri Mohan Singh applied for the post but was not selected. He challenged his termination the Government made reference to the Labour Court. On that reference the Labour Court gave an award of reinstatement of the workman with continuity of service and directed the bank to take him back when he reported on duty. This matter came up before the Hon'ble High Court in the above cited writ petition it was observed by their lordship that in his view the finding of the tribunal that the petitioner is entitled to the post of clerk in preference to others under section 25 (H) is correct.

The facts of the present case of Shri Matu Ram *versus* Ambala Central Co-operative Bank Ltd., Ambala are a kin to the facts of the case under reference. Shri Matu Ram appeared before the Selection Committee but he was not selected which shows that Shri Matu Ram had served the respondent management from 1979 to 1983. His career was spotless without any stigma. So he should have been selected in preference to new candidates. Moreover while terminating service of workman Shri Matu Ram no retrenchment compensation was paid to him, so there is a violation of provisions of section 25(F) of Industrial Disputes Act, 1947, so the termination order passed by the respondent management is illegal, unjust and incorrect.

Issue No. 2

The Labour Court has got jurisdiction to try the dispute between employee and employer of Co-operative Department this view has been recently taken by the Hon'ble Punjab and Haryana in its full bench judgment delivered in December, 1986.

Issue No. 3

For the foregoing reasons on the basis of my findings on issue No. 1 I pass an order for reinstatement of the workman with continuity in service and with full back wages; to which he was entitled to draw the pay at the same rate to which he would have been entitled to for the impugned termination of his services. Thus I pass award regarding the dispute between the parties accordingly.

V.P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

Dated : the 2nd March, 1987.

Endst. No. 529, 10th March, 1987

Forwarded (Four Copies) to the Financial Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

V.P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.